TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~297.~~ 99

THE WILMINGTON AND WELDON RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

JOHN A. REID, SHERIFF, ETC.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

FILED NOVEMBER 18, 1870.

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1 To the Hon. Richmond M. Pearson, chief justice of the supreme court of North Carolina:

The petition of The Wilmington and Weldon Railroad Company, a corporation chartered by, and doing business in, the said State, respectfully showeth:

That, at the January term, 1870, of the said court, and upon the 10th day of March, a judgment was rendered, dismissing an action for an injunction, at the instance of your present petitioner, against John A. Reid, as sheriff of Halifax County in said State; that in such action for an injunction was drawn in question the construction of a clause of the Constitution of the United States, and that the decision made by said judgment was against the right and exemption claimed by your petitioner, the plaintiff in the said action, under such clause of the Constitution, as appears of record in said court; and that such de-

2 cision is final. Your petitioner therefore desires to prosecute a writ of error upon said judgment, in the Supreme Court of the United States, and for that end prays your honor to allow him the same, and such other process as may be required in that case.

And your petitioner will ever pray.

MOORE & FOWLE,
Att'ys for Petitioner.

Allowed:

R. M. PEARSON, *Ch. J. S. C.*

MARCH 7TH, 1870.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United to the Honorable Richmond M. Pearson, chief justice; and Edwin G. Reade, William B. Rodman, Robert P. Dick, and Thomas Settle, associate justices of the supreme court of the State of North Carolina, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State, in which a decision could be had in the said suit between The Wilmington and Weldon Railroad Company and John A. Reid, sheriff of Halifax County, N. C., wherein was drawn in question the construction of a clause of the Constitution of the United States, and the decision was against the title, right, privilege, or exemption, specially set up and claimed under such clause of the said Constitution, a manifest error hath happened, to the great damage of the said Wilmington and Wel-

4 don Railroad Company, as by its complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said

Supreme Court, the 11th day of March, in the year of our Lord
5 one thousand eight hundred and seventy.

N. J. RIDDICK,
Clerk of the Circuit Court of the United States
for the District of North Carolina.

(Indorsed:) W. & W. Writ of error.

6 THE UNITED STATES OF AMERICA, *ss:*

To John A. Reid, sheriff of Halifax County, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of North Carolina, wherein The Wilmington and Weldon Railroad Company is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Richmond M. Pearson, chief justice of the said supreme court of North Carolina, this 7th day of March, 1870, in the year of our Lord one thousand eight hundred and seventy.

R. M. PEARSON, *Ch. J. S. C.*

7 (Indorsed:) W. & W. Summons to def't for Jno. A. Reid.

Service accepted on behalf of John A. Reid, by me, as his attorney.

TH'S BRAGG.

8 WILMINGTON & WELDON RAILROAD COMPANY, plaintiff,
vs.
JOHN A. REID, DEFENDANT. } Summons.

STATE OF NORTH CAROLINA:

To the sheriff of Halifax County, greeting:

You are hereby commanded to summon John A. Reid, the defendant above named, if to be found in your county, to be and appear before the judge of the superior court for the county of Halifax, on the 12th Monday after the second Monday of February, 1870, and answer the complaint, a copy of which will be deposited in the office of the clerk of the superior court for said county, within three days of the commencement of the term; and let him take notice that if he fail to answer the said complaint within that time the plaintiff will take judgment against him for the sum of dollars, with interest thereon from this time, and for cost.

Hereof fail not, and of this summons make due return.

Given under my hand and the seal of the said court, this day of November, 1869.

JOHN T. GREGORY,
Clerk of the Sup. Court, County.

9 On the back of the above summons was the following endorsement: Wilmington & Weldon R. R. Co. against John A. Reid. Summons.

Returnable to the spring term, 1870, superior court of Halifax County. Service accepted.

JOHN A. REID,
Sh'ff of Halifax County.

THE WILMINGTON & WELDON RAILroad Company, plaintiffs.
against
JOHN A. REID, OF THE COUNTY OF HALIFAX, defendant.

The plaintiff complains against the defendant, who has been duly summoned in an action brought against him in the superior court of Halifax, and alleges—

I. That the plaintiff is a corporation duly created and existing by the laws of the State, and is engaged according to the requirements and privileges demanded and granted in transporting daily over its road passengers and freights of various kinds. A copy of which said charter, marked "A," is herewith exhibited.

II. That whilst so engaged, to wit, on the day of November, 1869, it was in the possession of, and using in its business aforesaid, a certain steam engine and tender, called and known by the name of Edward Kidder, which was the sole property of the plaintiff.

III. That on said day the defendant seized the said engine and tender and took them out of the possession of the plaintiff with intent to sell the same, and deprive the plaintiff of the use thereof.

IV. That the defendant alleges, as the only excuse for such seizure, that he was sheriff of the county of Halifax, and in virtue
11 of his office was authorized and required by law to demand and receive from the plaintiff the sum of $651 60, which sum is composed of two seperate taxes, one of which is the apportioned share for the county of Halifax, of the tax laid and assessed upon the entire franchise and rolling-stock jointly of the plaintiff, under and by virtue of section 13 of the act entitled "An act to provide for collection of taxes by the State, and by the several counties of the State, on property, polls and income," ratified on the 13th day of March, 1869. And the other sum is for taxes assessed upon certain lots of land situate in the county of Halifax, appurtenant to, used with, and forming a part of the property of the said railroad company, and necessary to be used, in the successful operation of its business. Which said section 13 is in the following words: "Every guardian, executor, administrator, or trustee shall in like manner, but in a seperate list, give in the property held by him in that capacity. The value of the franchise of every railroad, canal, turnpike, plank road, navigation and banking company shall be given by the president or chief officer of the said several corporations on the day fixed by this act for the giving in of taxa-
12 ble property to the treasurer of the State, and shall be assessed and valued by the said treasurer, the auditor, and the governor of the State, and their valuation shall be returned to the county commissioners of any county in which any part of the said roads and canals or navigation works shall be, and the tax upon such franchise so valued shall be the same as upon property of equal value, and the tax *and the tax* collected in each county and township shall be in proportion to the length of such road, canal, or works lying in such county or township respectively, and such taxes shall be collected as other taxes are by law required to be. The rolling-stock of every railroad company

and the vessels employed by any canal or navigation company in its canal or works shall be valued with the franchise."

V. That the defendant having demanded the said sum of $651 60 of the plaintiff and being denied the payment thereof, he seized the said engine and tender, in order to sell them and thereby raise the said sum for the taxes aforesaid.

VI. The plaintiff admits that the defendant is sheriff of Halifax County; that a portion of its road lies within the county of Halifax; that its rolling-stock runs over such portion; that its franchise and said
13 stock have been assessed for a certain portion of the tax aforesaid, which portion was apportioned as the tax due in the county of Halifax; that the said lots of land were assessed for the taxes aforesaid; that the plaintiff was notified of the assessment of said taxes; and that the said taxes were refused to be paid to the defendant.

VII. Because, as the plaintiff insists, the lots aforesaid are not subject to be taxed under the said act of March, 1869, the same being a part and parcel of the said road; nor are its franchise and rolling-stock liable to be taxed by the State or any of its authorities, but are wholly exempt, as also the said lots, from all such taxes, by section 19 of its charter, which was passed in the year 1833, and provides as follows: "That it shall and may be lawful for the said president and directors to determine what installments shall be paid on the stock subscribed; to purchase with the funds of the company, and place on the said railroad constructed by them, all machines, wagons, vehicles, carriages, and teams of any description whatsoever, which may be deemed necessary and proper for the purposes of transportation, and all the prop-
14 erty purchased by the said president and directors, and that which may be given to the company, and the works constructed under authority of this act, and all profits accruing on the said works, and the said property shall be vested in the respective shareholders of the company and their successors and assigns forever, in proportion to their respective shares, and the shares shall be deemed personal property, and the property of said company and the shares therein shall be exempt from any public charge or tax whatsoever."

VIII. The plaintiff insists, being so advised, that its said charter constitutes in law a contract between the said State and the plaintiff, the said corporation; and that the said act of the general assembly of the 13th of March, 1869, which imposes the said tax on its franchise and property impairs the obligation of such contract and is in violation of that provision of the United States which declares that no State shall pass any law impairing the obligation of contracts.

IX. The plaintiff has applied to the board of commissioners of Halifax County, and for the reasons aforesaid, demanded exemption from said taxes, and said board have refused to allow the exemption.

15 X. Wherefore the plaintiff demands judgment for $8,000 00, the value of said engine and tender, with interest thereon, and costs of suit.

XI. And forasmuch as said engine and tender are daily used, and are necessary to enable the plaintiff to discharge its duties of transportation of passengers and freights, and the defendant with'olds and is about to sell the same, the plaintiff asks that an order be made by the judge of the sixth judicial district that the sale of said engine and tender be enjoined, and the same be delivered to the plaintiff upon giving an adequate undertaking to abide and perform the judgment of the court which may be rendered in this action.

B. F. MOORE,
Att'y for the Plaintiff.

The defendant admits the facts and matters stated in the foregoing complaint to be true.

THO'S BRAGG,
Att'y for Defendant.

16 *Exhibit filed with complaint.*

STATE OF NORTH CAROLINA:

To the board of commissioners of Halifax County:

The Wilmington and Weldon Railroad Company complaining to the said board of commissioners alleges:

1. That its franchise and rolling-stock have been assessed for taxation by the State and county of Halifax, and the sum of $532 35 has been apportioned to be collected in the said county of Halifax.

2. The plaintiff is advised that its franchise and rolling-stock are not liable to be taxed by the State or any of its authorities, and is altogether exempt from such taxation by sec. 19 of its charter passed in the year 1833, which is as follows:

"That it shall and may be lawful for the said president & directors to determine from time to time what installments shall be paid on the stock subscribed; to purchase with the funds of the company, and place on the said railroad constructed by them, all machines, wagons, vehicles, carriages, and teams of any description whatsoever, which may be deemed necessary and proper for the purposes of transportation; and all the property purchased by the said president and directors, and that which may be given to the company, and the works constructed under authority of this act, and all profits accruing on the said works, and the said property shall be vested in the respective stockholders of the company and their successors and assignees forever, in proportion to
17 their respective shares; and the shares shall be deemed personal property and the property of said company, and the shares therein shall be exempt from any public charge or tax whatsoever."

3. Wherefore the plaintiff demands that its aforesaid property, consisting of its franchise and rolling-stock, be exempt from taxation, and the tax-list be corrected in this particular.

B. F. MOORE,
For W. & W. R. R. Co.

At a meeting of the board of commissioners for the county of Halifax, on Saturday, 27th Nov., 1869, B. A. Lorender, chairman, Cha's N. Webb & Andrew Jackson, commissioners, present, an application was made by B. F. Moore, attorney for The Wilmington & Weldon R. R. Company, praying that the taxes which had been assessed on the W. & W. R. R. Co. for such portion of the said road as lies in this county, which tax amounted to $532 35, should be remitted. The application being read, and duly considered, was rejected.

But considering the question one of too much importance to be long unsettled, give leave to the company aforesaid to take an appeal.

JOHN N. BROWN, *Clk.*

18 STATE OF NORTH CAROLINA,
Halifax County:

Know all men by these presents that we, The Wilmington and Weldon Railroad Company, principal, by the attorney of said company, A. J. Galloway; Edward Conigland, and Henry J. Hervey, sureties, are held

and firmly bound to pay to the State of North Carolina the sum of four thousand dollars. Witness our hands and seals this the 14th day of December, 1869.

The condition of the above undertaking is this: Whereas the above bounden railroad company hath made application in writing to the board of commissioners of Halifax County, to be relieved from the tax of $2,368 96 assessed upon its franchise and rolling-stock and other property in pursuance of the act of the general assembly, entitled "An act to provide for collection of taxes by the State and by the several counties of the State on property, polls, and income," ratified on the 13th day of March, 1869, which relief was asked upon the ground that the said company was not liable to be assessed for such tax, but was excused therefrom by virtue of section 8 of its charter, passed in the year
19 1852, and the said board denied the relief demanded in this particular, and the said railroad has taken an appeal to the superior court of Halifax County:

Now, therefore, if the said railroad company shall abide by and perform the final judgment in the said superior court, then this undertaking shall be void; otherwise it shall remain in full force and effect.

(Signed) A. J. GALLOWAY, [SEAL.]
Atto. for W. & W. R. R. Co.
EDW'D CONIGLAND. [SEAL.]
H. J. HERVEY. [SEAL.]

20 WILMINGTON & WELDON RAILROAD Company *against* JOHN A. REID.

Upon reading and filing of complaint in the above-named action, and on motion of B. F. Moore, counsel for plaintiff, it is ordered—

That, upon plaintiffs entering into bond, with approved security, in the sum of five thousand dollars, conditioned according to law, the above defendant be commanded to refrain from the selling the property levied upon for taxes until the further order of this court.

It is further ordered that, upon the execution of the bond aforesaid, the property levied upon be delivered into the custody of the plaintiff, his agents or attorney.

Dec. 20th, 1869.

[SEAL.] S. W. WATTS, *J. S. C.*

Know all men by these presents that we, The Wilmington and Weldon *& Weldon* Railroad Company, by the attorn'y of said company, A. J. Galloway; Edward Conigland, and Henry J. Hervey, in the county of Halifax, and State of North Carolina, are held and firmly bound unto John A. Reid in the sum of five thousand dollars, lawful money of the United States of America, "to be paid to the said John A. Reid,
21 his executors, administrators, and assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this the 14th day of December, A. D. 1869.

Whereas the above-named Wilmington and Weldon Railroad Company has applied to the judge of the sixth judicial district for an injunction to stay the collection of taxes against The Wilmington and Weldon Railroad Company by the said John A. Reid, as sheriff of Halifax county:

Now, the condition of this obligation is such, that if the above-bounden, The Wilmington & Weldon Railroad Company, Edward Conigland, and Henry J. Hervey shall well and truly pay to the said John A. Reid, his executors, administrators, and assigns, all such damages and costs as may be awarded to him or them by the court of final hearing of the cause, then this obligation to be void; otherwise to remain in full force and effect.

(Signed)
[SEAL.]

A. J. GALLOWAY, [SEAL.]
Att'y for W. & W. R. R. Co.
EDWARD CONIGLAND. [SEAL.]
HENRY J. HARVEY. [SEAL.]

22

AT CHAMBERS AT RALEIGH,
January 18th, 1869.

W. & W. R. R. Co.
against
JOHN A. REID.

Motion to vacate the injunction order heretofore granted in this cause—counsel of plaintiff and defendant being present and assenting to the hearing of the motion made by the defendant to vacate the order of injunction heretofore made in this case—motion refused; whereupon an appeal to the supreme court is prayed and allowed, upon the defendant giving the undertaking required by law.

S. W. WATTS, *J. S. C.*

23 HALIFAX COUNTY:

In the superior court.

THE WILMINGTON & WELDON RAILROAD Company, plaintiff,
against
JOHN A. REID, DEFENDANT.

20TH DAY OF JANUARY, 1870.

Whereas on the 18th day of January, 1870, the defendant moved before his honor, Samuel W. Watts, judge at chambers, to have the injunction and injunction order vacated, which injunction order was heretofore made in the above-entitled action, and which motion was refused by his honor;

And whereas the appellant intends to appeal from the said judgment to the supreme court:

Now, therefore, we, John A. Reid, of the county of Halifax, and H. J. Hervey, of said county of Halifax, undertake, pursuant to the statute, that the said appellant shall pay all costs and damages that may be awarded against the plaintiff on such appeal, not exceeding five hundred dollars.

JOHN A. REID, *Sh'f.*
H. J. HERVEY.

Witness:
E. T. CLARK.

HALIFAX COUNTY, *ss:*

John A. Reid and H. J. Hervey, above named, being severally duly

sworn, say, each for himself, that he is a resident of the State of North Carolina, and worth double the sum specified in the above under-
24 taking, over all his debts and liabilities, and exclusive of property exempt from execution.

JOHN A. REID, *Sh'f.*
H. J. HERVEY.

Sworn and subscribed before me this 20th day of January, 1870.
[SEAL.] JOHN T. GREGORY,
Clerk of the Superior Court.

STATE OF NORTH CAROLINA,
Halifax County:

In the superior court.

WILMINGTON & WELDON RAILROAD COMPANY
against
JOHN A. REID.

I, John T. Gregory, clerk of the superior court of the county and State aforesaid, do hereby certify that the foregoing contains a full, true, and perfect copy and transcript of all the proceedings had and taken in the abov-eentitled action as appears from the original papers which are filed of record in my office; also the appeal bond executed and accepted and herewith sent up as a part of the said
25 record.

In witness whereof I have hereunto subscribed my name and affixed my seal of office, at office in Halifax town, this the 20th day of January, A. D. 1870.

[SEAL.] JOHN T. GREGORY,
Clerk Superior Court Halifax County, N. C.

STATE OF NORTH CAROLINA:

Supreme court, January term, 1870.

WILMINGTON & WELDON R. R. Co.
vs.
JOHN A. REID.

Upon argument of counsel, and after due consideration, Chief Justice R. M. Pearson, rendered the following as the opinion of the court:

This case falls under the principle set out in the opinion delivered at this term, in Raleigh & Gaston R. R. Co. against Reid. The discussion is made in that case, for it seemed to be considered on the argument as the one of the most difficulty.

By its charter The Wilmington & Weldon R. R. Co. has a franchise, and a provision is inserted therein, that "the property of said company and the shares therein, shall be exempted from any public charge or tax whatsoever." Non constat that the franchise is not the
26 subject of taxation; and the fact, if it be so, that the property of said company is exempted from liability to taxation for all time to come, only makes the franchise so much the more valuable; and, on the ad valorem mode of taxation, there can be no difference.

The order in the court below is reversed.

This will be certified.

Upon which opinion the following judgment was entered against the plaintiff:

STATE OF NORTH CAROLINA:

Supreme court, January term, 1870. 433. Halifax County.

WIL. & WELDON R. R. Co. *vs.* JOHN A. REID. } Judgement.

This cause came on to be argued upon the transcript of the record from the superior court of Halifax County; upon consideration whereof, this court is of opinion that there is error in the record and proceedings of the said superior court:

It is therefore considered and adjudged by the court here that the opinion of the court, as delivered by the Honorable R. M. Pearson, C. J., be certified to the said superior court, to the intent that the order be reversed and further proceedings had therein accordingly.

27 And it is considered and adjudged further, that the plaintiff, the said Wilmington and Weldon Railroad Company, pay the costs of the appeal in this court incurred, to wit, the sum of forty-one and $\frac{55}{100}$ dollars, and let execution issue therefor.

JANUARY 22ND, 1870.

I, William H. Bagley, clerk of the supreme court of North Carolina, do hereby certify that the foregoing contains a full, true, and perfect transcript of the record in the above-entitled cause, wherein "The Wilmington and Weldon Railroad Company" is plaintiff, and John A. Reid is defendant, and the proceedings had therein in the said supreme court of North Carolina.

In testimony whereof I hereunto subscribe my name and affix the seal of the said supreme court, at the city of Raleigh, in said State, this the second day of June, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.]

W'M H. BAGLEY,
Clerk Supreme Court of N. C.

28 *Exhibit A, referred to in allegation I of complaint.*

An act to incorporate The Wilmington and Weldon R. R. Company, with acts amending the same.

Be it enacted by the general assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That it shall be lawful to open books in the town of Wilmington, under the direction of Edward B. Dudley, P. K. Dickinson, Robert H. Cowan, Aaron Lazarus, James Owen, William B. Meares, William P. Hort, Alexander McRae, and James S. Green, or any five of them; and in the city of Raleigh, under the direction of Gavin Hogg, William H. Haywood, Charles L. Hinton, Johnson Busbee, Charles Mauley, Alfred Jones, Willis Whitaker, Ruffin Tucker, Weston R. Gales, and E. P. Guion, or any five of them; and at any other places under the direction of commissioners which may be designated by any three of the aforesaid commissioners at Wilmington, or any three of the commissioners at Raleigh, for the purpose of receiving subscriptions to an amount not exceeding eight hundred thousand

dollars, in shares of one hundred dollars each, to constitute a joint capital stock, for the purpose of effecting a communication by a railroad from some point within the town of Wilmington, or in the immediate neighborhood of the said town, to the city of Raleigh, or in the immediate neighborhood of the said city, the route of which road shall be determined on by the company hereby incorporated. The time and places of receiving subscriptions as aforesaid shall be made public by an advertisement in some newspaper published in Wilmington and a newspaper published in Raleigh; but the said commissioners and deputy
29 commissioners shall keep open the said books at least sixty days at each place of opening them; and at the time to be fixed by the commissioners at Wilmington for that purpose it shall be the duty of the said commissioners and their deputies to make return to the said commissioners at Wilmington of the subscriptions by them taken respectively; and if it shall appear that three hundred thousand dollars, or any larger sum, has been subscribed, the commissioners at Wilmington shall make it known by advertisement in the newspapers published there and in the city of Raleigh, and call a meeting of the subscribers at such time and place as they shall think fit, provided they shall give at least twenty days' notice of said meeting; but if the sum of three hundred thousand dollars shall not be subscribed for within the time first appointed the commissioners at Wilmington and Raleigh, and at other places to be designated as aforesaid, shall again open the said books to receive further subscriptions and keep them open until such time as they may deem proper and fit, and the like proceedings shall be adopted by the said commissioners and their deputies upon the reopening of said books as are required to be pursued upon the original or first opening of them; and if the whole amount of the capital or joint stock shall not be subscribed for upon either the first or second opening of the said books, then the books may be closed or continued open, as a majority of the commissioners at Wilmington may judge most beneficial and for such a period of time as they may prescribe: *Provided, however*, That if, upon the first or upon the second opening of the said books, the sum of three hundred thousand dollars shall be subscribed for, the power to continue open the said books shall be transferred and vested in the subscribers to the said company, or the president and directors whom they shall appoint, and not in the commissioners.

2. *Be it further enacted*, That when three hundred shares shall be subscribed for in the manner aforesaid, the subscribers, their executors, administrators, or assigns, shall be, and they are hereby, declared to be incorporated into a body politic or company, by the name and style of "The Wilmington and Raleigh Railroad Company;" and in that name may sue and be sued, plead and be impleaded; and shall possess and enjoy all the rights, privileges, and immunities of a corporation or a body politic in law, and may make all such rules, by-laws, and regulations, not inconsistent with the Constitution of the United States and this State, as shall be deemed necessary for the well ordering and conducting the affairs of the company.

30 3. *Be it further enacted*, That upon any subscription for stock in said company, there shall be paid two dollars on each share at the time of subscribing, which payment shall be made to the commissioners receiving such subscriptions; and the residue thereof shall be paid in such instalments, and at such time, as may be required by the president and directors of said company. The commissioners and deputy commissioners appointed to receive subscriptions, shall forthwith, after the election of a president and directors of the company, pay

over to the said president and directors all moneys received by them; and on failure thereof the said president and directors may recover the amount due from them, or from any one or more of them, by motion or by petition, in any county or superior court of the State; and if the sums are demanded by petition, the defendants shall answer on oath, and the suit, whether by motion or petition, shall be heard and determined at the first court: *Provided, however*, That in either case the defendants shall have been notified at least ten days before the court in which the motion is made or the petition filed.

4. *Be it further enacted*, That when three hundred thousand dollars or more of the said stock shall be subscribed for, public notice of that event shall be given by any three or more of the commissioners at Wilmington, who shall have power, at the same time, to call a general meeting of the subscribers, at such convenient place and time as they shall name in said notice. To constitute such meeting, or any general meeting of the stockholders, a number of persons holding a majority of all the shares shall be present, either in person or by proxy; and if a sufficient number do not appear on the day appointed, those who do attend shall have power to adjourn from time to time until a meeting shall be formed.

5. *Be it further enacted*, That the proprietors of the stock, at the general meeting above directed, and every annual meeting thereafter, shall elect a president and ten directors, who shall continue in office, unless sooner removed, until the next annual meeting after their election, and until their successors shall be elected; but the said president, or any of the directors, may at any time be removed, and the vacancy thereby occasioned be filled by a majority of the votes given at any called or general meeting. The president, with any five or more of the directors, shall constitute a board for the transaction of business; and if the office of president become vacant, the directors shall elect one of their own body pro tem.; and if there be a vacancy in the directory, the other directors may fill the vacancy by electing a stockholder; and if the president shall at any time be absent from the board, the
31 directors may, if five be present, appoint one of their own body to act as president during that meeting.

6. *Be it further enacted*, That there shall be annual meetings of the proprietors of stock, at such times and places as the preceding general meeting have appointed. Proprietors may attend by proxy, under such rules as the by-laws prescribe: *Provided*, That in no case shall the president or any director vote under the authority of another stockholder; nor shall any officer or agent of the company be the proxy of a stockholder; and if there be any proxy which is jointly made to the president and another or others, or to any director and another or others, or to any other officer or agent of the company jointly with another or others, the proxy shall be void.

7. *Be it further enacted*, That special meetings of the company may be called by the president and directors, or a majority of their board assembled; or it shall be called by the president whenever ten members of the company or more, owning together two hundred shares, shall require it: *Provided*, that public notice shall be first given of the time and place of said meeting, and of the purpose for which it is called, unless the interest of the company requires that the cause of convening the meeting should not be published: *And provided*, That either in person or by proxy, there shall be present at the meeting a number of persons owning together a majority of the stock.

8. *Be it further enacted*, That the president and directors of said

company shall be, and they are hereby, invested with all the rights and powers necessary for the construction, repair, and maintaining of a railroad, to be located as aforesaid, and to begin at such point and prosecuted in such directions as the stockholders shall direct; and they may cause to be made and constructed for the said company all works whatsoever which may be deemed necessary or expedient to the successful and proper completion and enjoyment of said railroad. They may appoint a secretary and treasurer, and other officers, and take from them bonds and security for the faithful performance of their duties, which bonds shall be made payable to the company; but the salaries or other compensation of the said officers shall be regulated by the stockholders in general meeting. And during the intervals between the general meetings of the stockholders, the president and directors may transact all the business of the company, with the limitations hereinbefore and hereafter stated.

9. *Be it further enacted*, That the president and directors shall have power to make contracts with any person or persons, on behalf of the company, for making said railroad, and performing all other works respecting the same: *Provided*, They shall not make any contract with any member of the board of directors, nor with the president, without the express assent of the stockholders being given to such a contract at a general meeting.

10. *Be it further enacted*, That at any general meeting of the stockholders, no person who has an individual interest in a question to be decided by them shall be allowed to vote, either for himself, or as the proxy of another stockholder; and no person shall be elected a president or a director of the company, who does not own at least twenty shares of stock in the company; and if any person, after his election to the office of president or director, ceases to be the owner of so many shares, he shall thereupon cease to be a president or a director of the company, and the vacancy shall be filled as heretofore provided for; nevertheless the stockholders may elect a president and directors who are not owners of twenty shares each, if it is done by the unanimous consent of those present at a general meeting.

11. *Be it further enacted*, That if any stockholder shall fail to pay the sum required of him, on his subscription, by the president and directors, or a majority of them, within one month after the same shall have been advertised in some newspaper published at the seat of government, it shall and may be lawful for the said president and directors, without further notice, to move for judgment, in the county or superior court of Wake or of New Hanover, against the delinquent stockholder or his assignee, or both, for the amount of the instalment required to be paid, at any court held within one year after the notice, and the court shall give judgment accordingly, or they may sue for the same, in an action of assumpsit, or by warrant, according to the jurisdiction of the respective tribunals of the State; and in case of a warrant, there shall be no stay of execution; and it shall and may be lawful for the said president and directors, either without any such suit or after it, to sell at public auction, and convey to the purchaser, such share or shares of such stockholders so failing or refusing, giving, however, one month's notice of the time and place of sale by advertisement in some newspaper published at the seat of government; and after retaining the sum due and all costs and charges of the suit or of the sale, or of both, out of the proceeds thereof, to pay the surplus over to the former owner or his legal representative; and if the sale shall not produce the sum required to be advanced, with the incidental costs and charges

aforesaid, the president and directors may recover the balance
33 of the original proprietor, or his assignee, or executor, or administrator, by notice in court as aforesaid; or if judgmant has been already obtained, they may take out execution thereon for the balance due them; and any purchaser of the stock of the company, under the sale by the president and directors, shall be subject to the same rules and regulations as the original proprietor; and no sale by the original proprietor or his assigns, nor by the company, shall release the original proprietor from his obligation to the company to pay the whole amount of his subscription; but the president and directors may proceed against the original proprietor and his assigns or the assignee of the original proprietor and his assigns, so that they do do not exact full payment from both, or any more than one.

12. *Be it further enacted*, That the debt of a stockholder due to this company for stock therein, either as original proprietor or first or subsequent assignee, shall be considered as of equal dignity with judg ments in the distribution of the assets of a deceased stockholder by his executor or administrator.

13. *Be it further enacted*, That it shall and may be lawful for the said company to purchase and hold, and take by gift or devise, all lands and other estate and property of any kind, to be by them used or improved, or resold and conveyed: *Provided*, The said property and estate are faithfully applied to the purposes and objects hereby intended to be effected; and in general meetings and at other times, the president and directors for the time being are hereby authorized and empowered by themselves or their agents to exercise all the powers herein granted and all such other powers and authority for the effectual prosecution of the undertaking hereby intended to be effected, and for the management of the affairs of the corporation not hereinbefore granted, as may be necessary to carry into effect the object of this grant.

14. *Be it further enacted*, That if the president and directors aforesaid cannot agree with the owners of land through which it may be necessary to make the said railroad, as to the terms upon which the said railroad shall be opened through the same, then it shall and may be lawful for the president and directors to file a petition, in the name of the company, in the court of pleas and quarter sessions of the county wherein the land lies, under the same rules and regulations as are now prescribed by law for laying off public roads in said county; and upon the filing of said petition, the same proceedings shall be had as in cases of laying off public roads, excepting these, to wit, the president and directors, by themselves or by their agent, shall mark out the course of the road, and it may be wide enough to give the com-
34 pany sixty-five feet clear on each side of the base of the road; and the jury, in assessing the damage, shall likewise assess the value of the benefits resulting to the owners of the land for the constructing of the road through or near the lands of the owner or owners of that which is marked out for the road, and the jury shall be sworn to act accordingly; and when the jury shall have assessed the damages to the owner or owners of the land, through which the road is laid off, and also the value of the benefit resulting as aforesaid, it shall be returned to court, and final judgment entered accordingly for the damages assessed, which, however, shall be extinguished pro tanto by the value of the benefits resulting to the owner: and it shall be lawful for the company, or the president and directors, to pay the difference, if there be any, into the office of the clerk, for the use of the owner or owners, or his, her, or their guardian, as the case may be, and thereupon, and

also, if there be no damage due, enter upon the land laid off, and construct their road or other improvements thereon, to make all necessary excavations and embankments, and to hold the said land to their own use and benefit; and in all things have the same power over the said land so laid off as though they owned the fee simple therein: *Provided*, That nothing in this act contained shall be so construed as to give power to said company to lay off said road through the yard, garden, or burial ground, appurtenant to the mansion house of any person whatsoever, without the consent of the owner thereof, or his, her, or their guardian, as the case may be.

15. *Be it further enacted*, That the written consent of any owner or proprietor of any lands through which the said road is to be constructed, showing his, her or their agreement to the same, shall be valid and effectual to give the same power and authority over the lands covered by the road, and sixty-five feet on each side thereof as aforesaid, as if the same had been conveyed by a deed of bargain and sale, or condemned upon petition as aforesaid; and although the said lands may belong to a feme covert, the signing of such assent by her and her husband shall be as conclusive and effectual against her as though she had been a feme sole, subject, however, to the proviso contained in the preceding section; and this assent shall be binding and conclusive, though it be signed before the company is formed.

16. *Be it further enacted*, That when any wood, gravel, earth or stone shall be wanted for the construction or repairing of said road, and the president and directors cannot agree with the owners of the lands adjacent as to the terms for which they can procure the same, then it shall be lawful for the president and directors, by themselves or agents or officers, to enter upon any adjacent lands not in a state of cultivation, and take therefrom all wood, stone, earth, or gravel so needed as aforesaid: *Provided*, That they shall not, without the owner's consent, cut down any fruit trees, or trees preserved in any lot or field for shade or ornament, or take any timber, gravel or stone, constituting any part of a fence or building; and when any gravel, stone, or earth shall be taken as in this act is provided, the president and directors may tender amends to the owner or proprietor; and if the owner or proprietor shall be dissatisfied with the amount, he may refuse it, and file his petition against the company in any court of the county where the land lies, (first giving ten days' notice thereof to the president and directors,) praying to have a jury summoned to go upon the land, view it, and assess the damages he, she, or they may have sustained thereby; upon which it shall be the duty of the court to order a jury as in laying off public roads; which jury shall go upon the lands, and, after being duly sworn to do equal justice to all parties, they shall consider what damages the owners of the land shall have sustained; and, after assessing the same, shall return their proceedings to court; and if the court approve thereof, the damages so assessed shall be paid by the company; but if the court shall not approve thereof, they shall order another jury to be summoned, who shall proceed in like manner to assess and make return to the court; and if the court shall approve thereof, the company shall pay the damages assessed; and if they do not pay it, judgment may be entered, and execution may issue thereon, as against other corporations: *Provided, however*, That the jury shall in all cases take into view the benefit which has resulted to the owner of the land by the construction and maintaining of the road: *Provided further*, That if the damages assessed by the jury are not more than the amount tendered by the company or its agent, (although the amount

of the tender be not paid into court,) the petitioner shall not recover costs: *And provided further*, That either party not satisfied with the judgment of a county court in such cases may appeal therefrom to the superior court upon giving bond and security, as in other cases of appeals.

17. *Be it further enacted*, That the president and directors, and all other officers and agents of the company, may enter upon the lands of any person or persons whatever for the purpose of surveying a route for the said railroad and laying off the same; and they may mark or chop on the trees the course laid off as aforesaid, so that they do not
36 invade the dwelling or the yard or garden of any person or persons, without his, her, or their consent.

18. *Be it further enacted*, That if the president and directors of said company shall, without the consent of the owner, construct the said railroad over the lands of any person or persons before a condemnation of the same in the manner provided in the preceding section, it shall and may be lawful for the owner or owners of said land to petition, after the manner and according to the rules provided in the sixteenth section hereof, and not otherwise; and after the assessment of the damages to be paid, and the payment thereof, the property in the ground covered by the road, and sixty-five feet on each side thereof, measuring from the base of the said road, shall become to all intents and purposes vested in the company in fee simple; and if the owners of said lands shall bring any action of trespass against the company, or any of its officers, or any other action but a petition as aforesaid, the defendants may give this act in evidence under the general issue, or upon a special plea; and it shall bar the said action or suit.

19. *Be it further enacted*, That it shall and may be lawful for the said president and directors to determine, from time to time, what instalments shall be paid on the stock subscribed; to purchase with the funds of the company, and place on the said railroad constructed by them, all machines, wagons, vehicles, carriages, and teams of any description whatsoever, which may be deemed necessary and proper for the purposes of transportation; and all the property purchased by the said president and directors, and that which may be given to the company, and the works constructed under the authority of this act, and all profits accruing on the said works, and the said property shall be vested in the respective shareholders of the company, and their successors and assigns forever, in proportion to their respective shares; and the shares shall be deemed personal property, and the property of said company, and the shares therein shall be exempt from any public charge or tax whatsoever.

20. *Be it further enacted*, That the stockholders of the said company may, at any general meeting, reopen the books of subscriptions, under regulations to be prescribed by them, to increase the capital stock of said company until the whole capital of eight hundred thousand dollars is subscribed; or they may sell the stock remaining unsubscribed for, and the advance on the same, above par, shall belong to the proprietors of the stock originally subscribed; and in case the books are opened
37 after a part of the road is completed, and profits received thereon and expended on the road, the original subscribers shall be reimbursed, out of the profits of the road, the amount of profits that has been expended anterior to the last subscriptions, before any dividends of profits is made among all the stockholders.

21. *Be it further enacted*, That the stockholders in general meeting may, if they think fit, resolve to construct a branch or branches to the main road, to be connected with the main road at such point or points as they may determine on, and to lead in such direction,

and to such a point or points as they may think best; and in order that they may do so, the said stockholders are fully authorized to cause books to be opened for subscriptions to the said lateral road or branch of the main road; and the subscribers for stock shall be subject to all the rules previouly made by the company, and become members of the company, with this exception only, viz, that the stock subscribed by them shall be faithfully and honestly applied to the construction of that branch of the road for which they subscribed it; but the subscribers for the main road and the branches shall constitute but one company; and their rights of property and estate shall be in common, and not separate: *Provided, however*, That the whole capital of subscribed stock shall not exceed one million of dollars.

22. *Be it further enacted*, That all the powers, rights, and privileges conferred by the preceding sections upon the said company, in respect to the main road, and the lands through which it may pass, are hereby declared to extend in every respect to the said company, and the president and directors thereof, in the laying out, in the construction, and in the use and preservation of said lateral or branch roads.

23. *Be it further enacted*, That it shall and may be lawful for the said company to construct a branch to the main road as aforesaid, under the restrictions aforesaid, so soon as the main road has reached the point at which the branch road is intended to be joined with the main road; but they shall not, under any pretence whatever, apply the funds of the company to the construction of a lateral or branch road, until the main road is completed, except they be subscriptions specifically made for the branch or lateral road.

24. *Be it further enacted*, That no person shall have leave to connect or intersect with the said railroad, or any of its branches, unless it shall be done by some company incorporated in this State; and in all such cases the company intersecting shall erect the most approved and suitable apparatus for weighing the cars, or other vehicles, that are to be brought over the road intersected with; and if they fail to do so
38 within a reasonable time after a request made of them, the company omitting this shall forfeit and pay to the other company two hundred dollars, to be recovered by action of debt before any court of record in this State; and shall be liable, moreover, to pay the cost of such an apparatus after it is put up by this company, which shall be recoverable by an action on the case brought before any court of record in this State: *Provided, however*, That the general assembly shall not grant this right to intersect with this road to any company who shall build a road less than twenty miles long on one side of this road.

25. *Be it further enacted*, That where a branch or lateral road to the main road is shorter than twenty miles, no other person or company shall be authorized and empowered to build a railroad from any point near its termination, so as to intersect with this main road in order to injure this company.

26. *Be it further enacted*, That so soon as ten miles of said railroad shall be completed, and as often thereafter as any other section of like length shall be completed, the said company, or the president and directors, may transport all produce or other commodities that shall be deposited convenient to the said road for that purpose, and which they may be required to convey to any point on said road; and it shall be lawful for the said president and directors, or the company aforesaid, and they are hereby authorized to erect a toll-gate or toll-gates on said roads, at such points as they may choose; and they shall be entitled to receive and to demand the following rates, to wit, not exceeding four

cents a mile for toll, and nine cents a mile for transportation per ton of 2,000 pounds; and for the transportation of passengers, not exceeding six cents per mile for each passenger, until the net profits received shall amount to a sum equal to the capital stock expended, with six per cent. per annum interest thereon from the time the money was advanced by the stockholders until received back in the net profits; but when the net profits received as aforesaid from the tolls aforesaid shall have amounted to a sum equal to the capital stock aforesaid, with interest thereon as aforesaid, then the tolls which the said company, or the president and directors, shall be entitled to receive for the transportation of produce or other commodities on the said railroad, shall be fixed and regulated from time to time by the president and directors of the company, so as to make them sufficient, in their estimation, to yield a net profit equal to fifteen per cent. per annum on the capital stock of the company over and above what may be necessary for the repairs, improvement, or renewal of the same, together with all other incidental expenses of the company; and it shall not be lawful for any
39 other person or company whatever to travel along or upon the said road, or any part thereof, or use it, or any part thereof, for transportation of produce or otherwise, without the license or permission of the president and directors; but nothing herein contained shall be so construed as to prevent the said company from making a contract for the transportation of the mail, upon such terms as may be agreed on between said company and the agents of the United States.

27. *Be it further enacted*, That it shall be lawful for the said company, in the construction of said road, to intersect or cross any public or private way established by law; and it shall be lawful for them to run their road along the route of any of said roads: *Provided*, That whenever they intersect or cross the said public or private roads, the president and directors shall cause the railroad to be so constructed as not to impede the passage of travelers on the public road or private way aforesaid; and whenever the railroad runs over and along with such public common road or way, the president and directors shall cause the new common road (which shall be laid out by order of the county court upon the petition of the said president and directors) to be opened at their expense; but the jury empannelled shall again take into view, in estimating the damages of the owner, the value to the said owner of having the railroad constructed through or near his lands.

28. *Be it further enacted*, That certificates of stock shall be issued under such regulations as the by-laws prescribe; and the shares of the company shall be transferable according to such rules, and upon such terms only, as may be established by the company in general meeting.

29. *Be it further enacted*, That it shall be lawful for the president and directors to erect warehouses, and other necessary buildings for the use of the company, at convenient and eligible sites; they may also erect scales at the toll-gates or elsewhere on the road, or at the ends of it, to weigh the produce or other commodities conveyed thereon.

30. *Be it further enacted*, That it shall and may be lawful for the president and directors, or the company hereby created, to borrow money for the objects of this act, and to make and issue all proper evidences of such loan and assurances for the repayment thereof.

31. *Be it further enacted*, That in all meetings of the company each share shall be entitled to one vote: *Provided*, That the stockholders may, at any general meeting, establish a different scale of voting, if it shall be unanimously agreed to.

32. *Be it further enacted*, That the president and directors shall render distinct accounts of their proceedings and disbursements of money to the annual meeting of stockholders, and at any other times when the company shall require it; and so soon as the railroad is completed, the said president and directors, or a majority of them, shall, semi-annually, make a dividend of the profits of the road among the stockholders; or, if they shall deem it advisable to do it, they may make such dividends of profits as are collected for tolls and transportation, and all other resources of the company, before the whole is completed.

33. *Be it further enacted*, That if the said company shall not begin the said road, or some part thereof, in three years after the ratification of this act, they shall forfeit all the privileges conferred by this charter. If they shall have not completed the main road from Wilmington to Raleigh in twelve years thereafter, then the company shall forfeit so much of the rights and privileges hereby created as confer upon the said company the power of extending the said road above the point at which it shall be then constructed; but they shall not forfeit their property and privileges in any manner as to so much of the road as they have completed: *Provided, however*, That the said company shall in good faith expend all their capital subscribed in endeavoring to construct a railroad along the whole of said route, and providing the necessary vehicles and fixtures for its use and enjoyment.

34. *Be it further enacted*, That if the president and directors shall be unable to agree with the proprietor for the purchase and sale of such quantity of ground as may be necessary for the erection of a toll-house, or a house to cover stationary machines, or to protect engines and cars or other vehicles, together with stables, warehouses, and offices, or for any other use which the convenience of the company shall require, it shall and may be lawful for the president and directors to file a petition in some court of the county where the land lies, against the proprietor or proprietors, setting forth the circumstances; and upon its being made to appear in court that the said proprietor or proprietors have had ten days' notice of such application, the court shall direct a jury to be summoned to go upon the premises; which jury shall be sworn to do equal and impartial justice, and to assess the damage which the said proprietor will sustain by reason of the condemnation of such land; and they shall proceed to assess the amount the petitioners ought to pay to the proprietor; but in assessing said amount the jury shall take into the estimate the benefit resulting to said proprietor from constructing such railroad, and directing the works contemplated, on or near to the lands of the proprietor, but only in extinguishment of damages; and the said president and directors may afterwards pay the said assessment into court or not as they choose; if they do pay it, the company shall be seized of such land in fee; if they refuse to do it, they shall pay the costs; and the sheriff or his deputy, or the coroner or his deputy, as the case may be, are hereby authorized to administer the said oath to the jury aforesaid.

35. *And be it further enacted*, That it shall and may be lawful for the company hereby created so to construct all such bridges as it may be necessary for them to erect for the purposes of their railroad, as to afford general accommodation to all travellers; and to demand and receive by themselves or agents or tenants, from all persons passing over and using such bridges, a reasonable toll, not, however, to exceed the highest rate of toll allowed by law on any bridge of this State: *Provided, however*, That no such toll shall be charged on the produce, or per-

sons, or any commodities which are conveyed in the cars of the railroad.

36. *Be it further enacted*, That full right and privilege are hereby reserved to the State, or to any company hereafter to be incorporated by their authority, to connect with the road hereby provided for, any other road leading from the main route to any part or parts of this State, so that in forming such connection no injury shall be done to the works of the company hereby incorporated.

37. *Be it further enacted*, That if any person or persons shall wilfully, by any means whatever, injure, impair, or destroy any part of the road constructed by the authority of this act, or any of the works, buildings, machines, wagons, vehicles, carriages, or other property of the company, such person or persons shall be liable to indictment, and upon conviction he, she, or they shall be fined and imprisoned at the discretion of the court, not exceeding a fine of one thousand dollars and one year's imprisonment, and be liable moreover to the action of the company for damages, by an action on the case, in any court of record in this State.

38. *Be it further enacted*, That this act shall be in force from and after the ratification thereof; and all laws and clauses of laws, coming within the meaning and purview of this act, shall be, and the same are, hereby repealed.

(Indorsement on cover:) No. 297. The Wilmington and Weldon Railroad Company, plaintiff in error, vs. John A. Reid, sheriff, &c. N. Carolina sup. court. Filed 18th November, 1870.